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TRANSCRIPT OF RECORD

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U. S. S. C.

Supreme Court of the United States

OCTOBER TERM, 1937

No. 25

COMMONWEALTH OF PENNSYLVANIA, EX REL. ELMER SULLIVAN, PETITIONER,

vs.

STANLEY ASHE, WARDEN, STATE PENITENTIARY, WESTERN DISTRICT OF PENNSYLVANIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA

PETITION FOR CERTIORARI FILED APRIL 9, 1937.

CERTIORARI GRANTED MAY 17, 1937.

SUPREME COURT OF THE UNITED STATES

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 22, 1937.

[fol. 1]

IN THE SUPREME COURT OF THE STATE OF PENNSYLVANIA

COMMONWEALTH ex Rel. ELMER SULLIVAN

vs.

STANLEY ASHE, Warden, State Penitentiary, Western District of Pennsylvania

PETITION FOR WRIT OF HABEAS CORPUS

To the Honorable, the Judges of the State Supreme Court:

The petitioner, Elmer Sullivan, respectfully represents that he is a citizen of the State of Pennsylvania, and of these United States, and he is of legal age, and that he believes he is being illegally restrained of his liberty for reasons set forth herein:

First. Your petitioner on the 26th day of April, 1929, entered a plea of guilty in the Court of Quarter Sessions of Erie County, Pennsylvania, at No. 25 May Sessions, 1929 to the following charge:

1st Count. Breaking and entering store building with intent to commit a felony therein;

2nd Count. Larceny.

He was sentenced by Judge William E. Hirt as follows:

"Sentenced to Western Penitentiary of Pennsylvania (situate in the County of Allegheny) by separate or solitary confinement at labor, for an indefinite term, the minimum of which shall be Three Years and the Maximum Six Years, and thereby to be kept, fed, clothed and treated as the law directs and stand committed until the sentence be complied with."

Your petitioner was forthwith committed to the Western Penitentiary of Pennsylvania to serve said sentence. Copy of said indictment and sentence of the court is attached hereto and made a part of this petition.

Second. Subsequently on the 7th day of February, 1930, your petitioner was transferred to the Prison Farm, known

as Rockview, situate in Centre County, State of Pennsyl-
[fol. 2] vania. On the 28th day of December, 1931, your said petitioner escaped from said Prison Farm, known as Rockview, situate in Centre County, State of Pennsylvania, and shortly thereafter was apprehended.

Third. On the 28th day of December, 1931, your said petitioner was indicted by the Court of Quarter Sessions of the Peace in and for the County of Centre as follows:

"The said Elmer Sullivan did wilfully, unlawfully and maliciously break out of said Western Penitentiary of Pennsylvania, contrary to the form of the Act of the General Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania."

On the 31st day of December, 1931, your petitioner was sentenced by Judge M. Ward Fleming, of the Court of Centre County, Pennsylvania, on the said charge of breaking out of prison as follows:

"To pay the cost of prosecution, a fine of $1.00 and undergo imprisonment in the Western Penitentiary, State of Pennsylvania, for a period not less than three years, nor more than six years, to be computed from the expiration of your original sentence from Erie County and that you stand committed until such sentence is complied with."

Your petitioner was forthwith committed to the said Western Penitentiary in compliance with the above sentence. A certified copy of the information, transcript, indictment and sentence of the said Court of Centre County, Pennsylvania, being attached hereto and made a part of this petition.

Fourth. Your petitioner therefore sets forth that he is at the present time confined in the Western Penitentiary of Pennsylvania, situate in Allegheny County, Pennsylvania, and that he is confined there illegally and by virtue of said illegal confinement, is restrained of his liberty contrary to law.

Wherefore, your petitioner prays your Honorable Court
[fol. 3] to issue a writ of habeas corpus for his relief agreeable to the Act of Assembly, 18th of February, 1785, for

the reason that he is being illegally restrained of his liberty in violation of law.

(S.) Elmer Sullivan.

[fol. 4] *Duly sworn to by Elmer Sullivan. Jurat omitted in printing.*

[fol. 5] IN THE COURT OF QUARTER SESSIONS, MAY SESSIONS, 1929

No. 25

COMMONWEALTH

vs.

ELMER SULLIVAN et al.

DOCKET ENTRIES

Charge: 1st Ct.—Breaking and Entering a Store Building with Intent to Commit a Felony Therein.
2nd Ct.—Larceny.
3rd Ct.—Receiving Stolen Goods.

And now, to-wit: April 26, 1929, the Defendants being arraigned, plead guilty to 1st and 2nd Counts, before,

William E. Hirt, Judge.

April 26th, 1929, And now, the Court sentence the defendant, Elmer Sullivan, to pay a fine of One Hundred Dollars to the Commonwealth, (for the use of the County of Erie), pay the costs of prosecution, to restore the property taken, if not already done, or pay the value thereof to the owner thereof, and undergo an imprisonment in the Western Penitentiary, of Pennsylvania, (situate in the County of Allegheny), by separate or solitary confinement at labor, for an indefinite term, the minimum of which shall be Three Years, and the maximum Six Years, there to be kept, fed, clothed and treated as the law directs and stand committed until the sentence be complied with.

Per Curiam, H.

[fol. 6] Clerk's certificate to foregoing paper omitted in printing.